

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORVILLE MEAUX,
Plaintiff,
v.
NORTHWEST AIRLINES, INC.,
Defendant.

No. C 04-04444 CW

ORDER GRANTING IN
PART AND DENYING IN
PART DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

In this employment discrimination case, Plaintiff Orville Meaux sues Defendant Northwest Airlines, Inc. for race discrimination. Defendant has filed a motion for summary judgment arguing that Plaintiff's claims are not supported by admissible evidence. Defendant asserts that the disciplinary measures taken against Plaintiff were supported by legitimate non-discriminatory reasons. Plaintiff opposes the motion. Having considered all of the papers filed by the parties the Court grants Defendant's motion in part and denies it in part.

BACKGROUND

In 1977, Plaintiff, an African-American male, began employment as a flight attendant with Hughes Airwest in Minnesota. In 1980, Hughes Airwest was bought by Republic Airlines, which was later purchased by Northwest in 1986. While working for Republic in the

1 1980s, Plaintiff was disciplined several times. In 1986, Plaintiff
2 reported to the Minnesota Department of Human Rights that his
3 discipline was the result of Republic's racially discriminatory
4 practice. The Department of Human Rights determined that "probable
5 cause exist[ed] to credit the allegation that an unfair
6 discriminatory practice ha[d] been committed." Meaux Decl., Exh.
7 C. The parties have not presented evidence pertaining to that
8 discrimination claim. Further, it is not clear what, if anything,
9 resulted from the Department's finding.

10 In 1988, Plaintiff filed a suit in state court in Minnesota,
11 alleging incidents of race discrimination, which are presumably the
12 same as those of which he complained to the Department of Human
13 Rights. Id., Exh. D. Plaintiff claimed that, in one incident, the
14 "Base Administrator,"¹ disciplined him for attempting to pass
15 security without proper identification. Meaux Decl., Exh. D. In
16 the present lawsuit, Plaintiff claims that the Base Administrator
17 was Eric Edmunson; however, Edmunson was not named in the 1988
18 complaint. Id. The 1988 case was resolved pursuant to a
19 confidential settlement agreement. Although Plaintiff alleges that
20 the agreement provided that he would "not be required to work under
21 Mr. Edmunson's management," First Amended Complaint (FAC) ¶ 14, the
22 agreement contains no such provision. Goldman Decl., Exh. D.

23 After the lawsuit settled, Plaintiff transferred from
24 Minnesota to Los Angeles and continued to work for Northwest. In
25 2001, Plaintiff transferred to Northwest's San Francisco operation
26

27 ¹The parties do not define "Base Administrator," but the Court
28 assumes it refers to some sort of manager with authority to issue
disciplinary measures.

1 and held the position of purser. Purser are experienced flight
2 attendants who preside over in-flight cabin operations and serve as
3 a resource to other attendants. At the time Plaintiff transferred,
4 Edmunson was Northwest's Operations Manager for San Francisco.
5 Dena Rasmussen was a flight attendant manager and Plaintiff's
6 direct supervisor. Rasmussen reported to Edmunson. Edmunson and
7 Rasmussen claim to have no knowledge of the 1988 lawsuit. Edmunson
8 Decl. ¶¶ 22-24; Rasmussen Decl. ¶ 18.

9 On November 1, 2001, Plaintiff's first day of work in San
10 Francisco, he attempted to pass through security with outdated
11 identification. He was allegedly uncooperative during the
12 screening process and the screeners reported this incident to
13 Edmunson. Edmunson Decl. ¶ 8, Exh. D. Plaintiff alleges that
14 Edmunson was present and observed Plaintiff's conduct personally
15 but did nothing to intervene on his behalf. Meaux Decl. ¶ 8.
16 Plaintiff states that he did not think that the screeners' alleged
17 mistreatment had anything to do with his race. Exh. A at 226-27.
18 No formal discipline resulted from this event. However, Plaintiff
19 was concerned that this incident was the result of Edmunson
20 inappropriately targeting him in retaliation for the 1988 lawsuit.
21 On December 1, 2001, Plaintiff wrote a letter to Edmunson and the
22 Director of Labor Relations stating as much. Meaux Decl. Exh. E.
23 Edmunson denies that he ever received the letter.

24 The events central to this case occurred on August 2, 2003.
25 On that date, Plaintiff was the purser on a flight from San
26 Francisco to Japan. A passenger allegedly acted rudely toward
27 Plaintiff. Instead of politely asking for things, the passenger
28 demanded them from Plaintiff. For instance, he allegedly said,

1 "hang my coat now," and "take this, take this now" referring to his
2 meal tray. Edmunson Decl., Exh. I at 64-67. Toward the end of the
3 flight, the passenger told Plaintiff to "get my coat now" and
4 Plaintiff responded by asking, "What's the magic word?" Id. at 67.
5 Upset with Plaintiff's question, the passenger nonetheless
6 responded, "please," but then told Plaintiff that he would report
7 this incident to Plaintiff's manager. Id. Plaintiff asked the
8 passenger for his name and the name of his employer and supervisor.
9 When the passenger refused to provide this information, Plaintiff
10 presented him with a Notice of Violation card. That card is issued
11 to passengers whose conduct may be in violation of federal law.
12 Flight attendants give these cards to passengers as a warning
13 before notifying federal authorities of a violation. After
14 receiving the card, the passenger threatened to contact his lawyer.
15 Once the passenger disembarked the aircraft, he spoke with a
16 Northwest gate agent about the incident.

17 On September 1, 2003, Edmunson wrote the passenger a letter of
18 apology. He stated, "I was very sorry to hear that you were
19 displeased with the service that Purser Orville Meaux provided you,
20 specifically the embarrassment you were subject to. Please accept
21 my sincere apologies." Schmidt Decl., Exh. F. Edmunson then
22 wrote, "While I cannot disclose the details of disciplinary actions
23 taken against the Purser, you can be assured that I am addressing
24 your concerns directly with the crew members." Id.

25 Rasmussen, Plaintiff's immediate supervisor, investigated the
26 incident. Before she interviewed Plaintiff, she discussed the
27 situation with Edmunson. On September 29, 2003, after interviewing
28 Plaintiff, Rasmussen determined that the passenger was not in

1 violation of any Federal Aviation Regulation nor was his conduct
2 disruptive according to Northwest guidelines for disruptive
3 behavior. Northwest defines disruptive behavior as "disorderly
4 conduct, verbal abuse, harassment and irrational behavior."
5 Northwest notes, "Rude behavior is not considered disruptive."
6 Rasmussen Decl., Exhs. C, K. Rasmussen concluded that Plaintiff
7 erred by issuing the Notice of Violation card and she issued him a
8 "Level I Reminder," the lowest level of formal discipline. Id.,
9 Exh. K. Plaintiff was no longer able to serve as a purser.

10 The same day that Plaintiff received the Level I Reminder, he
11 wrote a letter to the passenger's employer. He stated, "My
12 management required that I explain what and why I did concerning
13 his behavior that took place during that flight on August 2, 2003,
14 also for me to explain why your employee is suing Northwest
15 Airlines." Edmunson Decl., Exh. I. He noted that the passenger's
16 "behavior on this flight was very unruly at best, one that I hope
17 is not common to any of your other employees." He continued,
18 "Because of his behavior, I lost my position as a purser." Id. He
19 also wrote that, if the passenger "would repeat this type of
20 behavior on another flight or airline, it might not turn out well
21 for him. I really don't believe he knows the seriousness of his
22 actions." Id. Along with the letter, Plaintiff enclosed an
23 eighteen-page memo, which detailed his version of the August 2
24 incident. The memo was addressed to Rasmussen and indicated that
25 it was copied to Edmunson and three other Northwest officials. In
26 actuality, Plaintiff never sent the letter or the memo to any of
27 these individuals. Although the letter was dated September 29,
28 2003, Plaintiff claims that he sent the letter to the passenger's

1 employer on October 23, 2003. Meaux Decl. ¶ 40.

2 Plaintiff states that, on October 9, 2003, he asked Ms.
3 Rasmussen for a copy of the passenger's complaint. Rasmussen gave
4 Plaintiff a copy of the complaint and allegedly told him, "You know
5 you have the right, you could write this passenger's employer and
6 let them know of his behavior." Id. at ¶ 38. Rasmussen claims
7 that "at no point in time . . . did I tell Mr. Meaux or say words
8 to the effect that he could or should write to the passenger or the
9 passenger's employer with respect to the passenger's conduct during
10 the August 2, 2003 flight." Rasmussen Decl. ¶ 13.

11 Northwest claims to have no knowledge about the letter until
12 the passenger contacted Northwest in November, 2003. The passenger
13 complained that he was concerned for his safety and threatened to
14 file a lawsuit. Plaintiff then gave Northwest a copy of the letter
15 and, on December 7, 2003, Edmunson suspended Plaintiff with pay
16 pending further investigation. Over the next several weeks,
17 Edmunson investigated the incident further, including holding two
18 question and answer sessions with Plaintiff and his union
19 representative. Rasmussen did not participate in the investigation
20 or this disciplinary action because she was pregnant. Rasmussen
21 Decl. ¶ 15. At the conclusion of the investigation, Edmunson
22 determined that Plaintiff should be fired. On January, 26, 2004,
23 Northwest sent Plaintiff a letter notifying him that he was being
24 fired for violating several of the Rules of Conduct for Employees
25 of Northwest Airlines, including Rule 1, failing to use good
26 judgment and common sense, and Rule 30, engaging in conduct
27 detrimental to Northwest.

28 Plaintiff grieved his Level I warning and termination to a

1 System Board for Adjustments. The matter was arbitrated by a three
2 member panel, which included a union arbitrator, a company
3 arbitrator and a neutral arbitrator. The panel conducted a three-
4 day hearing between June 25 and June 27, 2008. After the hearing,
5 during which Plaintiff presented evidence and cross-examined
6 witnesses, the panel concluded that there was just cause for
7 Plaintiff's Level I discipline and termination.

8 LEGAL STANDARD

9 Summary judgment is properly granted when no genuine and
10 disputed issues of material fact remain, and when, viewing the
11 evidence most favorably to the non-moving party, the movant is
12 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
13 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
14 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
15 1987).

16 The moving party bears the burden of showing that there is no
17 material factual dispute. Therefore, the court must regard as true
18 the opposing party's evidence, if supported by affidavits or other
19 evidentiary material. Celotex, 477 U.S. at 324; Eisenberg, 815
20 F.2d at 1289. The court must draw all reasonable inferences in
21 favor of the party against whom summary judgment is sought.
22 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
23 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
24 1551, 1558 (9th Cir. 1991).

25 Material facts which would preclude entry of summary judgment
26 are those which, under applicable substantive law, may affect the
27 outcome of the case. The substantive law will identify which facts
28 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248

1 (1986).

2 Where the moving party does not bear the burden of proof on an
3 issue at trial, the moving party may discharge its burden of
4 production by either of two methods:

5 The moving party may produce evidence negating an
6 essential element of the nonmoving party's case, or,
7 after suitable discovery, the moving party may show that
8 the nonmoving party does not have enough evidence of an
essential element of its claim or defense to carry its
ultimate burden of persuasion at trial.

9 Nissan Fire & Marine Ins. Co., Ltd., v. Fritz Cos., Inc., 210 F.3d
10 1099, 1106 (9th Cir. 2000).

11 If the moving party discharges its burden by showing an
12 absence of evidence to support an essential element of a claim or
13 defense, it is not required to produce evidence showing the absence
14 of a material fact on such issues, or to support its motion with
15 evidence negating the non-moving party's claim. Id.; see also
16 Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 885 (1990); Bhan v.
17 NME Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991). If the
18 moving party shows an absence of evidence to support the non-moving
19 party's case, the burden then shifts to the non-moving party to
20 produce "specific evidence, through affidavits or admissible
21 discovery material, to show that the dispute exists." Bhan, 929
22 F.2d at 1409.

23 If the moving party discharges its burden by negating an
24 essential element of the non-moving party's claim or defense, it
25 must produce affirmative evidence of such negation. Nissan, 210
26 F.3d at 1105. If the moving party produces such evidence, the
27 burden then shifts to the non-moving party to produce specific
28 evidence to show that a dispute of material fact exists. Id.

1 If the moving party does not meet its initial burden of
2 production by either method, the non-moving party is under no
3 obligation to offer any evidence in support of its opposition. Id.
4 This is true even though the non-moving party bears the ultimate
5 burden of persuasion at trial. Id. at 1107.

6 DISCUSSION

7 I. Discrimination Claims

8 Defendant moves for summary adjudication of Plaintiff's claims
9 for violation of Title VII of the 1964 Civil Rights Act and
10 California's Fair Employment and Housing Act, on the grounds that
11 Plaintiff (1) offered no evidence suggesting that Defendant acted
12 with a discriminatory motive and (2) failed to rebut Defendant's
13 legitimate, non-discriminatory reasons for disciplining and
14 terminating him.

15 A. Applicable Law

16 In McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973),
17 and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248
18 (1981), the Supreme Court established a burden-shifting framework
19 for evaluating the sufficiency of a plaintiff's evidence in
20 employment discrimination suits. The same burden-shifting
21 framework is used when analyzing claims under FEHA. Bradley v.
22 Harcourt, Brace and Co., 104 F.3d 267, 270 (9th Cir. 1996). Within
23 this framework, plaintiffs may establish a prima facie case of
24 discrimination by reference to circumstantial evidence; to do so,
25 plaintiffs must show that they are members of a protected class;
26 that they were qualified for the position they held or sought; that
27 they were subjected to an adverse employment decision; and that
28 they were replaced by someone who was not a member of the protected

1 class or that the circumstances of the decision otherwise raised an
2 inference of discrimination. St. Mary's Honor Center v. Hicks, 509
3 U.S. 502, 506 (1993) (citing McDonnell Douglas and Burdine). Once
4 a plaintiff establishes a prima facie case, a presumption of
5 discriminatory intent arises. Id. To overcome this presumption,
6 the defendant must come forward with a legitimate, non-
7 discriminatory reason for the employment decision. Id. at 506-07.
8 If the defendant provides that explanation, the presumption
9 disappears and the plaintiff must satisfy his or her ultimate
10 burden of persuasion that the defendant acted with discriminatory
11 intent. Id. at 510-11.

12 In order to do so, the plaintiff must produce "specific,
13 substantial evidence of pretext." Steckl v. Motorola, Inc., 703
14 F.2d 392, 393 (9th Cir. 1983). To survive summary judgment, the
15 plaintiff must introduce evidence sufficient to raise a genuine
16 issue of material fact as to whether the reason the employer
17 articulated is a pretext for discrimination. The plaintiff may
18 rely on the same evidence used to establish a prima facie case or
19 put forth additional evidence. See Coleman v. Quaker Oats Co., 232
20 F.3d 1271, 1282 (9th Cir. 2000); Wallis v. J.R. Simplot Co., 26
21 F.3d 885, 892 (9th Cir. 1994). "[I]n those cases where the prima
22 facie case consists of no more than the minimum necessary to create
23 a presumption of discrimination under McDonnell Douglas, plaintiff
24 has failed to raise a triable issue of fact." Wallis, 26 F.3d at
25 890. "[T]he plaintiff 'must tender a genuine issue of material
26 fact as to pretext in order to avoid summary judgment.'" Id.
27 (quoting Steckl, 703 F.2d at 393). To do so, "the plaintiff need
28 produce very little evidence of discriminatory motive to raise a

1 genuine issue of fact." Lindhahl v. Air France, 930 F.2d 1434, 1438
2 (9th Cir. 1991). "[S]tray' remarks are insufficient to establish
3 discrimination." Merrick v. Farmers Ins. Group, 892 F.2d 1434,
4 1438 (9th Cir. 1990).

5 The Ninth Circuit has instructed that district courts must be
6 cautious in granting summary judgment for employers on
7 discrimination claims. See Lam v. University of Hawai'i, 40 F.3d
8 1551, 1564 (9th Cir. 1994) ("We require very little evidence to
9 survive summary judgment' in a discrimination case, 'because the
10 ultimate question is one that can only be resolved through a
11 "searching inquiry"-- one that is most appropriately conducted by
12 the factfinder'") (quoting Sischo-Nownejad v. Merced Cmty. Coll.
13 Dist., 934 F.2d 1104, 1111 (9th Cir. 1991)).

14 B. Analysis

15 1. Level I Reminder

16 Plaintiff argues that he has shown sufficient circumstantial
17 evidence related to Defendant's decision to issue him a Level I
18 Reminder in response to his conduct on August 2, 2003 to raise an
19 inference of discrimination. Flight attendants are given
20 considerable discretion when deciding whether to issue a Notice of
21 Violation Card. While they are not to be issued in response to
22 rude behavior, they may be issued to address verbal abuse and
23 harassment. The line between rude behavior and verbal abuse and
24 harassment is not a bright one. Therefore, supervisors must
25 exercise considerable discretion when deciding whether to
26 discipline a flight attendant for improperly issuing a Notice of
27 Violation Card.

28 To support the inference of discrimination, Plaintiff relies

1 on two racial comments that Rasmussen allegedly made at some point
 2 during "the early 2000s." Velez Decl., ¶ 7.² One of Plaintiff's
 3 co-workers, Jesse Velez, claims that he overheard a conversation
 4 between Rasmussen, who is Causasian, and another flight attendant,
 5 who is also Caucasian, in which Rasmussen jokingly referred to
 6 African Americans as "coons" and "gorillas." Id. ¶¶ 7-8. Comments
 7 that overtly exhibit hostility to a protected class, even if they
 8 are general comments about the class, or are directed to other
 9 people, are probative of discriminatory intent. Dominquez-Curry v.
 10 Nevada Transp. Dept., 424 F.3d 1027, 1038 (9th Cir. 2005). "Where
 11 a decisionmaker makes a discriminatory remark against a member of
 12 the plaintiff's class, a reasonable factfinder may conclude that
 13 discriminatory animus played a role in the challenged decision."
 14 Id. In addition, the person exhibiting discriminatory animus need
 15 only be one of the people who participated in, or influenced, the
 16 decisionmaking process and the plaintiff need not show that this
 17 person communicated his bias to the other decisionmakers. Id. at
 18 1039-40. Plaintiff's direct evidence of racial animus by his
 19 supervisor, who made the decision to issue the Level I Reminder,

20
 21 ²Defendant objects to several of the declarations Plaintiff
 22 submitted to oppose the summary judgment motion. First, Defendant
 23 objects to Plaintiff's use of the testimony taken during a previous
 24 arbitration. However, these statements were taken under oath and
 25 are admissible under Federal Rule of Civil Procedure 56(e) as
 26 affidavits. See Curnow v. Ridgecrest Police, 952 F.2d 321, 324
 27 (9th Cir. 1991). Second, Defendant objects to Velez's declaration
 28 because it is "vague, speculative and unintelligible." Reply at 3.
 It is not. Third, the portions of Jones' declaration to which
 Defendant objects were not relied upon by the Court. As to the
 remainder of Defendant's objections, to the extent that the Court
 relied upon evidence to which Defendant objected, the objections
 are overruled. The Court did not rely on any inadmissible evidence
 in reaching its decision. To the extent the Court did not rely on
 evidence to which Defendant objected, the objections are overruled
 as moot.

1 establishes a prima facie case of discrimination in the issuance of
2 that discipline.

3 Defendant has submitted sufficient evidence that its decision
4 to issue Plaintiff a Level I Reminder was based on legitimate, non-
5 discriminatory reasons. Therefore, the burden shifts back to
6 Plaintiff to show that Defendant's proffered reasons for the
7 employment action are a pretext for race discrimination.

8 Plaintiff argues that Defendant's investigation of Plaintiff's
9 issuance of the Notice of Violation Card was conducted in bad
10 faith. Plaintiff points to the fact that Edmunson sent the
11 passenger a letter of apology before Plaintiff's discipline was
12 determined. However, this letter was a standard customer service
13 apology sent to complaining passengers. There is no evidence that
14 this letter was related to the decision to issue Plaintiff a Level
15 I reminder. Further, Rasmussen, not Edmunson, was in charge of the
16 investigation and made the decision to issue the Level I Reminder.
17 Plaintiff has shown that Rasmussen had ample discretion in the
18 discipline process and that there are disputes of fact as to what
19 occurred on the August, 2003 flight and whether Plaintiff's conduct
20 warranted a Level I Reminder. In conjunction with the direct
21 evidence of racial animus discussed above and, drawing all
22 reasonable inferences in Plaintiff's favor, the Court finds that
23 there is a material issue of fact as to whether Defendant's
24 legitimate reasons for issuing the Level I Reminder were
25 pretextual. Accordingly, the Court denies Defendant's summary
26 judgment motion on this claim.

27 2. Termination

28 Plaintiff argues that he has submitted sufficient

1 circumstantial evidence related to Defendant's decision to
2 terminate him for writing the passenger's employer a letter after
3 the August 2 incident to raise an inference of discrimination.
4 Plaintiff alleges that Rasmussen told him that he had the right to
5 write to the passenger's employer about the passenger's behavior.
6 Further, Plaintiff presents evidence that, on separate occasions,
7 Rasmussen told other flight attendants to write letters directly to
8 passengers and their employers in response to on-flight incidents.
9 Velez Decl. ¶¶ 5-6; Jones Decl. ¶ 10. Defendant responds that,
10 even if Rasmussen authorized Plaintiff to write a letter, she did
11 not authorize Plaintiff to write the type of letter that he did,
12 one which contradicted Northwest's findings and insulted and
13 threatened the passenger. Further, nobody at Northwest read or
14 approved the contents of the letter before Plaintiff sent it to the
15 passenger's employer. However, making all inferences in favor of
16 the non-moving party, Plaintiff could have reasonably believed that
17 he was entitled to write the passenger's employer to convey his
18 version of the events.

19 To support an inference of discrimination, Plaintiff relies on
20 the same two racial comments that Rasmussen allegedly made and
21 evidence that Rasmussen authorized him to write a letter to the
22 passenger's employer. However, Rasmussen did not authorize
23 Plaintiff to write the twenty-page threatening letter that he did.
24 Moreover, Rasmussen was not involved in the termination decision.

25 Plaintiff also argues that he was treated differently than a
26 similarly situated Caucasian flight attendant to whom the Court
27 will refer as Doe. However, Plaintiff's and Doe's conduct are not
28 comparable. While still onboard an aircraft, Doe wrote a passenger

1 a half-page note telling the passenger that "as a courtesy to the
2 flight crew in the future it would be appreciated if you would not
3 place your garbage in the aisle and point at it when your flight
4 attendant comes by to pick up garbage. . . . I am not a walking
5 garbage can." Schmidt Decl., Rasmussen Dep., Exh. 12. Doe did not
6 threaten the passenger or write to his employer. When discussing
7 the incident with his supervisor, Doe acknowledged fault, whereas
8 Plaintiff failed to accept any responsibility for his conduct.
9 Further, the same decisionmaker was not involved in Doe's and
10 Plaintiff's discipline decision. Rasmussen issued Doe a Level I
11 Reminder, whereas Edmunson terminated Plaintiff. Therefore,
12 Plaintiff and Doe are not similarly situated for purposes of a
13 disparate treatment discrimination analysis. In sum, Plaintiff has
14 not presented evidence that the circumstances of his termination
15 raise an inference of discrimination.

16 Even if Plaintiff had established a prima facie case of
17 discrimination, Defendant has submitted sufficient evidence that
18 its decision to terminate Plaintiff was based on legitimate, non-
19 discriminatory reasons; and, for the same reasons that Plaintiff
20 has not proven a prima facie case of discrimination, he has not
21 carried his burden to show that the termination decision was
22 pretextual. Therefore, the Court grants Defendant's summary
23 judgment motion on this claim.

24 II. Retaliation Claim

25 Plaintiff alleges that Defendant retaliated against him after
26 he engaged in protected activities, in violation of FEHA.
27 Specifically, Plaintiff alleges that he engaged in the protected
28 activities of filing a claim with the Minnesota Department of Human

1 Rights in 1986 and filing a lawsuit in 1988 against Northwest. He
2 alleges that Defendant was aware of Plaintiff's activities and
3 retaliated against him by issuing the Level I Reminder in
4 September, 2003 and then by terminating him in January, 2004.

5 In order to establish a prima facie claim for retaliation
6 under Title VII and FEHA, a plaintiff must show that (1) he engaged
7 in protected activity, (2) the employer subjected him to an adverse
8 employment decision, and (3) there was a causal link between the
9 protected activity and the employer's action. Passantino v.
10 Johnson & Johnson Consumer Prods., Inc., 212 F.3d 493, 506 (9th
11 Cir. 2000). Defendant argues that Plaintiff fails to establish the
12 causal link between the protected activities and the adverse
13 action. The Court agrees.

14 "Causation sufficient to establish the third element of the
15 prima facie case may be inferred from circumstantial evidence, such
16 as the employer's knowledge that the plaintiff engaged in protected
17 activities and the proximity in time between the protected action
18 and the allegedly retaliatory employment decision." Yartzoff v.
19 Thomas, 809 F.2d 1371, 1376 (9th Cir. 1987). When temporal
20 proximity is the only evidence of causality, the Supreme Court has
21 held that the time between the two events must be "very close," and
22 has cited with approval cases holding that a three-month or
23 four-month period is insufficient alone to establish causation.
24 See Clark Co. School Dist. v. Breeden, 532 U.S. 268, 273-74 (2001)
25 (citing Richmond v. ONEOK, Inc., 120 F.3d 205, 209 (10th Cir. 1997)
26 (three-month period insufficient); Hughes v. Derwinski, 967 F.2d
27 1168, 1174-1175 (7th Cir. 1992) (four-month period insufficient)).

28 Here, there is no evidence that Defendant's actions were

1 causally related to Plaintiff's protected activity. Plaintiff
2 presents no evidence that any decisionmaker in Plaintiff's 2003 and
3 2004 discipline had knowledge of his 1986 Department of Human
4 Rights claim. Therefore, no cause of action for retaliation can be
5 based on this protected activity.

6 Regarding the 1988 lawsuit, Plaintiff alleges that, in
7 December, 2001, he hand delivered a letter to Edmunson which stated
8 that Plaintiff believed he was being targeted by Edmunson in
9 retaliation for the earlier lawsuit. Edmunson denies receiving the
10 letter. Even if Edmunson received the letter, the adverse
11 employment actions taken in 2003 and 2004 are not close enough in
12 time to the 1988 lawsuit or to the 2001 letter to support an
13 inference that the adverse employment actions were causally related
14 to the protected activity. Therefore, the Court grants Defendant
15 summary judgment on Plaintiff's retaliation claim.

16 III. Harassment Claim

17 Defendant moves for summary adjudication of Plaintiff's
18 hostile environment claims under FEHA and Title VII on the grounds
19 that Plaintiff cannot demonstrate that the alleged harassment was
20 sufficiently severe or pervasive to alter the conditions of his
21 employment.

22 A. Applicable Law

23 In order to demonstrate the prima facie elements of a hostile
24 work environment claim, a plaintiff must raise a triable issue of
25 fact as to whether (1) the plaintiff was subjected to verbal or
26 physical conduct because of protected characteristics; (2) the
27 conduct was unwelcome; and (3) the conduct was sufficiently severe
28 or pervasive to alter the conditions of the plaintiff's employment

1 and create an abusive working environment. Manatt v. Bank of
2 America, NA, 339 F.3d 792, 798 (9th Cir. 2003) (citing Kang v. U.
3 Lim Am., Inc., 296 F.3d 810, 817 (9th Cir. 2002)). A plaintiff
4 must show that the work environment was abusive from both a
5 subjective and an objective point of view. Fuller v. City of
6 Oakland, 47 F.3d 1522, 1527 (9th Cir. 1995) (citing Harris v.
7 Forklift Systems, Inc., 510 U.S. 17, 21-22 (1993)). In evaluating
8 the objective hostility of a work environment, the factors to be
9 considered include the "frequency of discriminatory conduct; its
10 severity; whether it is physically threatening or humiliating, or a
11 mere offensive utterance; and whether it unreasonably interferes
12 with an employee's work performance." Nichols v. Azteca Rest.
13 Enters., 256 F.3d 864, 872 (9th Cir. 2001) (citation omitted).

14 California courts look to federal Title VII decisions in
15 applying FEHA to racial harassment claims. Etter v. Veriflo, 67
16 Cal. App. 4th 457, 464 (1999).

17 B. Analysis

18 Plaintiff did not address Defendant's arguments that he has
19 not provided any evidence of his harassment claim. The Court has
20 reviewed the record and concludes that Defendant's alleged conduct
21 was not sufficiently severe or pervasive to alter the conditions of
22 Plaintiff's employment. See Manatt, 339 F.3d at 798. Therefore,
23 the Court grants Defendant's motion for summary adjudication of
24 Plaintiff's harassment claim.

25 IV. Punitive Damages

26 Defendant argues that Plaintiff is not entitled to punitive
27 damages because of the terms of Northwest's bankruptcy plan. Under
28 the plan, claims for punitive damages are subordinated claims; and

1 the findings of fact in the bankruptcy confirmation order provide
2 that the valuation of Northwest is insufficient to support a
3 distribution to subordinated claims. Defendant argues that the
4 bankruptcy plan and confirmation order do not allow for any award
5 of punitive damages. Plaintiff did not respond to this argument.

6 Defendant also argues that Plaintiff has not presented any
7 evidence to meet the standard for an award of punitive damages in
8 this case. "An award of damages under Title VII is proper where
9 the acts of discrimination giving rise to liability are willful and
10 egregious, or display reckless indifference to the plaintiff's
11 federal rights." Ngo v. Reno Hilton Resort Corp., 140 F.3d 1299,
12 1304 (9th Cir. 1998). The Court concludes that Plaintiff has not
13 presented any evidence to support a punitive damages award.
14 Although Plaintiff may proceed to trial on his discrimination claim
15 for the Level I Reminder, the evidence pertaining to that
16 discipline does not rise to the level of willful, egregious or
17 reckless indifference to Plaintiff's federal rights. Therefore,
18 the Court grants Defendant's motion for summary adjudication that
19 punitive damages are not available.

20 CONCLUSION

21 For the foregoing reasons, the Court grants Defendant's motion
22 for summary judgment in part and denies it in part. Docket No. 66.
23 The Court grants Defendant's motion with regard to Plaintiff's
24 retaliation and harassment claims. The Court denies Defendant's
25 motion with regard to Plaintiff's FEHA and Title VII race
26 discrimination claims relating to his 2003 Level I Reminder, but
27 grants Defendant's motion on those claims relating to his 2004
28 termination. Further, the Court grants Defendant's motion for

1 summary adjudication that Plaintiff is not entitled to seek
2 punitive damages.

3 IT IS SO ORDERED.

4
5 Dated: 02/18/2010

Claudia Wilken

CLAUDIA WILKEN
United States District Judge